

LABOUR DEPARTMENT

The 7th July, 1981

No. 9(I)81-8Lab 7462.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of the General Manager, Haryana Roadways, Gurgaon :—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL, TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 322 of 1979
between

SHRI TEK CHAND, DRIVER WORKMAN AND THE MANAGEMENT OF THE GENERAL MANAGER, HARYANA ROADWAYS GURGAON.

Present :—

Shri Bhim Singh Yadav, for the workman.
Shri K.L. Piplani, for the management.

AWARD

By order No. GG/29-79/42700 dated 27th September, 1979, the Governor of Haryana referred the following dispute between the management of the General Manager, Haryana Roadways, Gurgaon and its workman Shri Tek Chand Driver, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Tek Chand Driver was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 14th December, 1979 :—

1. Whether the termination of services of the workman was justified and in order ?
2. Relief.

And the parties led their evidence. It was revealed that the services of the workman were terminated by holding a domestic enquiry by the management. I considered the evidence and enquiry file and held by my order dated 11th November, 1980 that the enquiry was vitiated, therefore, it was set aside and the management was given opportunity to lead their evidence in support of their action. The management examined Shri Jai Bhagwan, Assistant Fitter as MW-2 and Shri Sita Ram Helper as MW-3. The workman examined Shri Deen Mohmad as WW-5, Shri Nand Lal Driver as WW-6, Shri Parbhu Dayal resident of Nogaon as WW-7 and himself as WW-8 and closed his case. Arguments were heard. Now I give my finding issue-wise :—

Issue No. 1.—I have gone through the list of allegations attached with the charge-sheet and find that the following charges were levelled against the concerned workman :—

- (1) Theft, (2) Deliberately causing defect in the vehicle, (3) Incurring loss to the Government, (4) Indiscipline and drinking while on duty.

The allegations were denied by the workmen,—*vide* his detailed reply running into five pages Ex. WW-4/1. As regards evidence the management produced Shri Jai Bhagwan, Assistant Fitter as MW-1 and Sita Ram helper as MW-2. MW-2 stated that on 10th February, 1978 he alongwith MW-3 went to Nogaon with a clutch plate to repair bus number 6305. On reaching there Shri Tek Chand driver the concerned workman told him that the clutch plate was defective, therefore, the same may be changed. On checking it was found that the vehicle was not defective and asked the driver to drive the vehicle. Near Nogaon the driver was asked to stop the vehicle but he stopped it at the end of village abadi where only 2-3 houses had remained. The driver was told that they were coming after taking their meals and then they will proceed to Delhi. When they returned it was found that the vehicle was not at its original place but was struck into a pit about a furlong ahead. He saw 6-7 persons alongwith the driver taking diesel oil from the vehicle. When he objected they were beaten by those persons. They then went in vehicle number 6524 to Alwar and made a report Ex. MW-2/1 against the driver which was signed by him on reaching Delhi in the morning. In cross-examination he stated that he did not lodge any report with the police regarding beating or theft of oil. He did not get himself medically examined. He further replied that report, Exhibit M.W.-2/1 was written by Shri Sultan Singh, Works Manager at his dictation. H stated that he had first checked the vehicle himself and then asked the driver to drive it. He denied the suggestion that he asked the driver to entertain them at a hotel in village Nogaon which the driver refused and that was the cause of annoyance. M.W.-3 stated that he went to Nogaon along with M.W.-2 to replace clutch plate of vehicle number 6305. The driver was found drunk. The vehicle was checked which was found in working order. He was asked to drive the vehicle. He further corroborated the statement of M.W.-2. In cross-examination he stated that they had reached Nogaon at about 7-45 p.m. Police Station was at a distance of 1 or 1 1/2 furlong from the place of occurrence. They did not lodge any report with the police about their beating and theft of diesel. He further replied that report, Exhibit M.W. 2/1 was written by him and handed over to a Clerk of P.M.A. Branch. The Conductor of the bus was present in the bus. They returned at 8-15 p.m. after taking their meals. He was not aware if he had given a similar statement before the Enquiry Officer.

W.W.-5 stated that on 10th July, 1978, he was on duty on bus number 6305 with Shri Tek Chand Driver. When the bus reached Nogaon at about 8-30 a. m. the clutch plate of the bus broke and the bus was not in a position to take the passengers to Delhi, therefore the passengers were transferred to another bus coming from Alwar. He sent a report with the driver of that bus about breakage of clutch plate. At about 8.00 p.m. on that date Shri Sita Ram and Jai Bhagwan came there. The bus was standing near the police post at the barrier. He had taken his meals alongwith the driver at noon in the nearby hotel. They did not take any drinks there. The mechanic asked the driver to arrange liquor and meals for them because whether was fine on that day which the driver refused saying that he was worried since morning, therefore, they should first repair the vehicle. He felt as if both the mechanics were in some what intoxication. Shri Jai Bhagwan felt annoyed and in a rage started the vehicle despite the denial of the driver, the clutch plate being broken and there will be no vacum. In the mean time the bus struck into a pit. They again asked Shri Jai Bhagwan to replace clutch plate so that it could be driven out of the pit. He replied that the clutch plate brought by them was of another make and could not fit in that vehicle. Then they went to Alwar in the night service bus. Next morning they were again asked to repair the vehicle but they went straight in the bus to Delhi. He further stated that a few persons were collected by them and the bus was pilled out of the pit and in the same defective condition it was slowly driven to Gurgaon Depot. He remained through out in the bus. He denied that any diesel was sold or taken from the bus. In cross-examination he stated that the bus reached Gurgaon workshop at 2.00 p.m. He further relied that he had reported the matter to S. S. I. and a note was made by the S. S. I. on the way bill about the defect in the vehicle. That way bill was in the office of the Roadways. He did not know if any domestic enquiry was held against the concerned workman. He denied that the report about defect in the vehicle was wrongly made by him. W. W.-6 Shri Nand

Lal, driver stated that on 11th August, 1978, Shri Jai Bhagwan and Shri Sita Ram had travelled his bus from Alwar to Delhi. At Nogaon when his vehicle stopped for entry the concerned workman had asked him about the presence of Shri Jai Bhagwan and Sita Ram in the bus and he told him that they were in the bus. He did not know what conversation took place between them but they did not get down from the bus. W.W.-7 stated that he was a hotel keeper at Nogaon near police post. The concerned workman and the Conductor had taken their meals at his hotel about 2½ years back. They did not drink there, nor there was any quarrel. W.W.-8 the concerned workman stated that he was a Driver in Haryana Roadways since 1968. On 10th July, 1968 he was on bus number HRC 6305 and coming from Alwar to Delhi. At about 8-30 a.m. the clutch plate of the vehicle got broken near Nogaon barrier. He sent a report to Delhi Depot and Shri Jai Bhagwan and Shri Sita Ram alongwith a clutch plate. They asked him for drinks and meals which he refused. Shri Jai Bhagwan drew vehicle despite refusal by the concerned workman and struck it into a pit because there was no vacuum pressure of brake. He asked him to repair the vehicle but he declined saying that he had not brought lighting arrangement and had brought clutch plate of another make of vehicle by mistake. Then they went to Alwar by night service and in the morning also did not repair vehicle. The Conductor asked him to take vehicle to Gurgaon Depot slowly otherwise it will take another day or two. He then took the vehicle to Gurgaon Depot. He further stated that in such a situation there was fear of accident and breakage of shaft or pinion in case the bus was driven with full of passengers. He further stated that he had collected some persons to help it out of the pit. The bus was driven in 3rd gear and it consumed more diesel oil. The vehicle was checked by Shri Hari Dev Sharma and Shri Dina Nath Mechanics and it was found that the clutch plate was not working and 3rd gear had stuck. Shri Dina Nath replaced clutch plate after bringing down gear box. The Foreman had asked him and his conductor whether they had reported the matter in Sub-Depot, Delhi and they narrated the incident to him. He made a remark on the way bill about the defect in the vehicle. He had also made a remark that a sum of Rs. 340 may be charged from Shri Jai Bhagwan and Shri Sita Ram for their negligence. The way bill had number 4542 and was issued on 9th July, 1978 and deposited in the office on 11th July, 1978. In cross-examination he admitted that he received charge-sheet which he replied, *vide* Exhibit W.W.-4/1. He stated that the bus started from Alwar at 6-00 a.m. and would have reached Delhi by 9-30 a.m. On 11th July, 1978, he started from Nogaon at about 10-00 a.m. and reached Gurgaon at 2-00 p.m. He denied the suggestion that he was drunk when Shri Jai Bhagwan and Shri Sita Ram reached there. He also denied it as incorrect that the bus was not defective or that he removed diesel oil from the vehicle.

I have gone through explanation, Exhibit W.W.-4/1 dated 11th August, 1978 given by the workman in reply to the charge-sheet. I find from the reply that the workman had given the same facts as narrated by him in his statement as W.W.-8. In para 7 he wrote that Shri Dina Nath Mistry checked up his vehicle and reported to the Foreman that clutch was out of order on account of breakage of spring and 3rd gear was jam. In para 9 he mentioned way bill number 4542 bearing serial number 45 on which was mentioned the same about defect of clutch by SSI on duty. The management failed to produce the relevant way bill and also Shri Dina Nath Sharma and SSI Incharge to refute version of Shri Tek Chand, Driver as stated by him in his explanation, Exhibit W.W.-4/1. They were also not associated in the domestic Enquiry. It is admitted by management witnesses Shri Sita Ram that Deen Mohmad Conductor was present in the bus. There is no allegation of any kind against Shri Deen Mohmad in the whole episode. He was the most material witness. His statement was not recorded in the domestic enquiry, nor he was produced by the management in this case. He was summoned by the concerned workman and he denied the version of the management about any beating or theft of oil etc. He corroborated the version of the concerned workman. The management in this case only produced two witnesses who were sent for repair of the vehicle and they did not repair the vehicle rather stated that it was road-worthy. This fact is belied by the reason of prudence because the driver started from Alwar at 6-00 a.m. and could have reached Delhi by 9-30 a.m. in case the vehicle had not become unfit at Nogaon. The Driver and the Conductor remained in the vehicle through out the day and night and no reasonable man will put him self to such an ordial without any motive. The managemen

has not put forward any motive as to why they remained at Nogaon and did not bring the vehicle to Delhi. This fact is also belief by the version that the vehicle was repaired, gear box was brought down and clutch plate replaced in Gurgaon workshop by Shri Dira Nath Sharma. The witnesses of the management had made allegations against the driver and made a complaint against him. It would have been better in case their version was supported by some corroborative evidence and Shri Deen Mohmad who was also an employee of the Roadways and no allegations were against him was the best witness.

There is a discrepancy in the statement of the management witnesses where MW-2 Shri Jai Bhagwan stated that the report, Exhibit MW-2/1 was written by Shri Sultan Singh, Works Manager at the dictation of Shri Jai Bhagwan and Sita Ram whereas Shri Sita Ram states that it was in his own hands and given to a clerk in P.M.A. branch. In MW-2/1 Shri Jai Bhagwan had stated that he narrated the whole incident to Shri Nand Lal driver whereas Shri Nand Lal who appeared as WW-6 does not say a single word about it, nor the management put any question to him in his cross-examination. I find that the driver had about more than 10 years of service at his credit and there is nothing to show against him being his adverse past record. Whereas on the other hand one of the complainants is Assistant Fitter and the other a helper. Their version that there was no defect in the vehicle is not believable because they reached Nogaon at about 8-30 p.m. and had no lighting arrangement with them. No engine part of the vehicle was opened by them to verify the defect. The defect of the vehicle was removed in the Gurgaon workshop also believe the version of Shri Jai Bhagwan and Shri Sita Ram. In such a situation, I observe that the management has failed to discharge the burden of proof of charges levelled against the workman. In these circumstances, I decide this issue against the management.

Issue No. 2.—The workman is entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages.

Dated the 23rd June, 1981.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 622, dated 27th June, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

The 14th September, 1981

No. 9(1)81-6 Lab/10302.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. the Sonepat Co-operative Sugar Mill Ltd., Sonepat :—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 222 of 1979

between

SHRI MAHAVIR SINGH WORKMAN AND THE MANAGEMENT OF M/S THE SONEPAT CO-OPERATIVE SUGAR MILLS LTD., SONEPAT

Present :—

Shri S. N. Solanki for the workman.

Shri Vishnu Dutt Sharma, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,-- vide his order No. ID/SPT/128-79, 52384, dated 11th December, 1979 under section 10 (i) (c) of the I. D. Act for adjudication, of the dispute existing between Shri Mahavir Singh workman and the Management of M/s. The Sonepat Co-operative Sugar Mills Ltd., Sonepat. The term of the reference was:—

Whether the termination of services of Shri Mahavir Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of references notices as usual were sent to the parties. The parties appeared in response to the notices, filed their respective pleadings and the only issue As per the term of reference was framed on the basis of their pleadings. The management examined Shri Sahib Singh Dehiya, Assistant Accountant as their sole witness and closed their case. The workman appeared as his own witness and closed his case.

I heard the learned representative of the parties and have also carefully perused the evidence oral as well as documentary available on the record and decide the issue as under:

The management has tried to justify their action on the basis of the findings of the Enquiry conducted by Shri Ajit Singh their legal assistant into the charges levelled against the workman for the theft of a fan on the night of 19-4-79 and also for remaining absent from 20-4-79 to 24-4-79 wherein the workman has been found guilty of the charges thereby resulting in the termination of the services of the workman. The workman has alledged in his notice of demand as well as in his rejoinder that the workman was not allowed the reasonable opportunity of cross-examination of management witnesses and for production of his defence. He was neither given the copy of the proceedings nor the copy of the enquiry report and as such the enquiry was vitiated and order passed on the basis of the same was illegal and wrong. The management did not examine the Enquiry Officer who could have proved the justness of the enquiry and whether the workman was provided full opportunity and the same was held in accordance with the principle of natural justice and the enquiry findings were based on the basis of evidence and were not perversa. The only witness examined by the management could not say anything about the fairness and propriety of the enquiry. In his cross-examination the witness has admitted that no presenting officer appeared on behalf of the management before the Enquiry Officer and he also could not say even by consulting the record whether any letter for conduct of enquiry was ever sent to the workman or any such letter was written by the Enquiry Officer. The management has badly failed to justify their action and the same cannot hold to be justified on the basis of the enquiry which has not been duly proved. The charges levelled against the workman are also false as the workman has deposed in his statement that he had remained in police custody for investigation purposes from 20th April, 1979 to 24th April, 1979 and when no case was made out against him the police let him off. The charge of the management i.e., he remained absent for this period is therefore false and by a show of enquiry the management has tried to victimise the workman in a malacious manner. Shri Om Parkash reported to the Security Officer the theft of the fan at 1-21 a. m. and it cannot be held that either he committed the theft or it was with his connivance and the management witness also could not any or admit this fact. Alongwith Shri Om Parkash the workman Shri Mahavir Singh helper/attendant in Engineering Department on duty from 4.00 P. M. to 12.00 midnight and Shri Balwant Singh helper attendant in Engineering department who was on duty from 12.00 midnight to 8.00 a. m. who attended the complaints and if not complaint was received they were to sit at main gate near the time office. The management witness has given out in his cross-examination in cases of workman Shri Mahavir and Balwant Singh it does not fall in their duties to take guard of the fan but their main duty was to remove the faults on the receipt of complaints from these circumstances I am fully convinced that the three workman namely Shri Mahavir Singh, Balwant Singh and Om Parkash were picked in order to get rid of them somehow and a false cases for theft of the fan was manipulated.

I am therefore constrained to hold that the termination of the workman is neither justified nor in order? The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

BANWARI LAL DALAL.

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endorsement No. 3212, dated the 1st September, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

BANWARI LAL DALAL.

Presiding Officer,
Labour Court, Haryana,
Rohtak.